

BEFORE THE  
POLLUTION CONTROL HEARINGS BOARD  
STATE OF WASHINGTON

PARKSIDE BUILDING COMPANY,

Appellant,

 $V_{\star}$ 

PUGET SOUND AIR POLLUTION  
CONTROL AGENCY,

Respondent.

PCHB No. 85-32

FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW  
AND ORDER

This matter, the appeal of a notice and order of civil penalty for unlawful burning (an unpermitted outdoor fire), came on for hearing before the Board at Seattle on June 24, 1985. Seated for and as the Board were Wick Dufford and Gayle Rothrock (presiding). Lawrence Faulk, Board member, availed himself of the hearing record and participated in the decision. Respondent agency elected a formal hearing, pursuant to RCW 43.21B.230 and WAC 371-08-155. Lisa Flechtner, court reporter, officially reported the proceedings.

Appellant company was represented by its General Manager, Randy Smith. Respondent agency was represented by its legal counsel, Keith

1 D. McGoffin.

2 Witnesses were sworn and testified. Exhibits were admitted and  
3 examined. Argument was heard. From the testimony, evidence, and  
4 contentions of the parties, the Board makes these

5 FINDINGS OF FACT

6 I

7 Respondent, pursuant to RCW 43.21B.260, has filed with the Board a  
8 certified copy of its Regulations I and II and all amendments  
9 thereto. We take official notice of those regulations.

10 II

11 On January 23, 1985, at 10:25 a.m., an inspector from PSAPCA  
12 investigated an outdoor fire complaint on a construction site at  
13 4010-57th Avenue, S.W., Seattle, King County, Washington. The  
14 complainant stated that a contractor had been burning construction  
15 debris, including prohibited materials, during the past year.

16 III

17 The inspector observed a pile of burning cedar scraps,  
18 approximately four feet in diameter by four feet high, located between  
19 the complainant's home and a speculation house under construction.  
20 The outdoor fire was being charged periodically with cedar scraps by a  
21 construction laborer and no attempt was made to extinguish it during  
22 the inspector's fifteen-minute observation of the event.

23 IV

24 During the observation, the inspector took four photographs and  
25 noted some bluish smoke, and proceeded further into the construction

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1 site, where he contacted the contractor's general manager to inquire  
2 about any burning permit(s) appellant company might have obtained. No  
3 burn permit was produced for the open fire the company was  
4 maintaining. The contractor's superintendent had instructed the  
5 laborer to set the fire and burn the lumber scraps.

6 While reviewing the matter of a permit, the two gentlemen had an  
7 incomplete exchange of inquiries on the propriety of extinguishing the  
8 fire immediately. The fire was quenched a while later.

9 V

10 While on the premises, the inspector issued a field notice of  
11 violation (No. 20464) for an infraction of the agency's Regulation I,  
12 Section 8.05 for causing or allowing an impermissible outdoor fire.

13 On February 20, 1985, respondent agency issued a formal Notice and  
14 Order of Civil Penalty No. 6214 of \$500 for the same asserted  
15 violation. From this action, Parkside Building Co. appealed to the  
16 Board on February 27, 1985.

17 VI

18 Appellant company has one previous bona fide incident of unlawful  
19 outdoor burning on record with PSAPCA dating back to 1981. This was  
20 prior to the employment of Randy Smith with appellant company.

21 Mr. Smith has directed that all lumber and construction scraps  
22 generated by that company's contract work be disposed of at authorized  
23 landfills, not burned. His directive was given immediately after the  
24 incident on January 23, 1985.

25  
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VII

Any Conclusion of Law hereinafter determined to be a Finding of Fact is hereby adopted as such.

From these Facts, the Board comes to these

CONCLUSIONS OF LAW

I

The Board has jurisdiction over these persons and these matters. Chapters 43.21B and 70.94 RCW.

II

Parkside Building Company, a firm which constructs single family homes in King County, did not create a business environment wherein all its employees responsibly became aware of air pollution control laws, especially those which are of particular application to construction firms. The company bears responsibility for compliance with the Clean Air Act of the state and of the local air pollution authority's regulations. Corporately they logically must accept responsibility for the subject incident. Randy Smith was not aware of PSAPCA's regulations on open burning until the agency inspector handed him a copy at the time the field notice of violation was issued.

III

The Legislature of the state of Washington has enacted the following policy on outdoor fires:

It is the policy of the state to achieve and maintain high levels of air quality and to this end to minimize to the greatest extent reasonably possible the burning of outdoor fires. Consistent with this policy, the legislature declares that

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such fires should be allowed only on a limited basis under strict regulation and close control. (RCW 70.94.740).

Pursuant to this and other legislative authority, the Respondent has adopted its Regulation I, Section 8.05(1) which provides in relevant part:

It shall be unlawful for any person to cause or allow any outdoor fire other than land clearing burning or residential burning except under the following conditions:

(1) Prior approval has been issued by the Control Officer or Board:

The fire in question was maintained to dispose of lumber scraps, and possibly minor amounts of other construction residue, and was not ignited under authority of a fire permit, thereby making it an impermissible outdoor fire.

## IV

Appellant has become cognizant of the need to minimize outdoor fires and to dispose of construction residue in another fashion. He did not flout respondent's regulations, either before or after the incident on January 23, and has made certain the company now follows safer disposal practices.

Because of the nature of this violation and these circumstances, the civil penalty should be reduced by one-half of its stated amount.

**V**

Any Finding of Fact hereinafter determined to be a Conclusion of Law is hereby adopted as such.

From these Conclusions, the Board makes this


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CONCLUSIONS OF LAW & ORDER  
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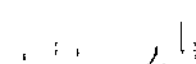
ORDER

Notice and Order of Civil Penalty No. 6214 issued by PSAPCA is affirmed; provided, however, that one-half the penalty is vacated and \$250 remains due and payable.

Done this 5<sup>th</sup> day of June, 1985.

POLLUTION CONTROL HEARINGS BOARD

  
GAYLE ROTHROCK, Vice Chairman

  
WICK DUFFORD, Lawyer Member

  
LAWRENCE J. FAULK, Chairman

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